

we find that it is appropriate to rely on New York for our benchmark comparison.³¹⁸ Having so determined, we compare Verizon's Virginia loop rates to New York loop rates and conclude that Verizon's Virginia loop rates pass our benchmark comparison to New York loop rates.³¹⁹

93. Despite the fact that Verizon's Virginia loop rates pass a benchmark analysis to New York loop rates, WorldCom contends that Verizon's Virginia loop rates are outside any reasonable TELRIC range.³²⁰ Specifically, WorldCom argues that the evidence submitted by it and AT&T in the Virginia Arbitration Proceeding is sufficient to rebut the presumption established by a benchmark analysis.³²¹ WorldCom offers no evidence, however, of any TELRIC violation with respect to loop rates other than to reference generally all evidence submitted in the Virginia Arbitration Proceeding.³²² As we explained above, we find it inappropriate for commenters in this proceeding to rely solely on evidence submitted in a separate pending proceeding. WorldCom has failed to provide any other evidence in this proceeding of an error sufficient to rebut the presumption of TELRIC-compliance established by a benchmark analysis of Verizon's Virginia loop rates." Accordingly, we find that Verizon's Virginia loop rates fall within a range of rates that a reasonable application of TELRIC principles would produce and, therefore, satisfy the requirements of checklist item two.

94. We also disagree with AT&T that Verizon's current loop provisioning policy in Virginia precludes us from finding that Verizon's Virginia loop rates are TELRIC-compliant based upon a benchmark comparison to its New York loop rates.³²⁴ AT&T argues that a

³¹⁸ See also *id.* at 3326-27, para. 53 (finding that New York is a reasonable benchmark state).

³¹⁹ In taking a weighted average of loop rates in Virginia and New York, we find that Virginia's loop rates are approximately 23 percent higher than New York loop rates. Comparing a weighted average of Virginia and New York loop costs, we find that Virginia loop costs are approximately 36 percent higher than New York loop costs. Because the percentage difference between Verizon's Virginia loop rates and the New York loop rates does not exceed the percentage difference between Verizon's loop costs in Virginia and Verizon's loop costs in New York, we conclude that Verizon's Virginia loop rates satisfy our benchmark analysis.

¹²⁰ WorldCom Comments at 19.

³²¹ *Id.*

¹²² *Id.*

³²³ WorldCom does allege one particular TELRIC violation affecting switching rates, but no specific error that would affect Verizon's Virginia loop rates. See *Id.* at 18.

³²⁴ Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 7, 2002) (AT&T Oct. 7 Pricing *Ex Parte* Lener) at 3-4; Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (AT&T Oct. 22 Pricing *Ex Parte* Letter) at 5-7. Specifically, AT&T contends that Verizon's current "no facilities" loop provisioning policy in Virginia "precludes the Commission from finding that Verizon's loop rates in Virginia. . . benchmark with Verizon's New York rates . . ." AT&T Oct. 7 Pricing *Ex Parte* Letter at 3; see also AT&T Oct. 22 Pricing *Ex Parte* Letter at 5. AT&T also argues that Verizon's loop provisioning policy precludes the Commission from finding that Verizon's Virginia loop rates comply with TELRIC. AT&T Oct. 7 Pricing *Ex Parte* Lener at 4-6; AT&T Oct. (continued...)

meaningful benchmark comparison must compare “comparable facilities or services” and that Verizon’s current “no facilities” policy renders a loop in Virginia less valuable than a corresponding loop in New York.³²⁵ Initially, AT&T argued that the relevant comparison is between a loop in Virginia and the corresponding loop “that the Commission and the New York Public Service Commission understood Verizon to be providing during the New York [section] 271 proceeding.”³²⁶ AT&T explains that, in the New York proceeding, the purchase of a loop by a competitive LEC was thought to include the implicit right to purchase additional loops at the same price, whereas Verizon’s current provisioning policy in Virginia affords no comparable right.³²⁷ In a later filing, AT&T adds, without further explanation, that “there is nothing in the subsequent Phase II UNE decisions of the New York PSC and its hearing examiner to suggest that the current New York rates reflect any changed understanding of Verizon’s loop provisioning policies.”³²⁸ This indicates that AT&T may now be arguing that Verizon’s loop provisioning policy undermines a benchmark comparison between Verizon’s Virginia and current New York loop rates.

95. We disagree. AT&T alleges that Verizon has enforced its “no facilities” policy since May 2001, which is prior to the time the New York Public Service Commission adopted its current UNE rates.” Moreover, Verizon asserts, and AT&T does not dispute, that “at no point in time has Verizon’s facilities policy in New York been different from its policy in Virginia.”³³⁰ Thus, assuming *arguendo* that differences in provisioning practices between two states could undermine a benchmark comparison of those states’ rates, the record in this proceeding does not support a finding that there are in fact any such differences. Moreover, although AT&T claims that Verizon’s “no facilities” policy extends to ordinary voice-grade loops, which are used in the

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22 Pricing *Ex Parte* Letter at 8-11; see also AT&T Comments at 15 (arguing that Verizon’s “no facilities” policy is “at odds” with the Commission’s TELRIC methodology because it appears to adopt a short-run assumption that no new plant is constructed to meet demand from competitive LECs); AT&T Reply at 12. Because Verizon relies on a benchmark comparison of its Virginia loop rates to its New York loop rates to demonstrate checklist compliance, we need not address whether Verizon’s loop provisioning policy precludes the Commission from finding that Verizon’s Virginia loop rates comply with TELRIC.

³²⁵ AT&T Oct. 7 Pricing *Ex Parte* Lener at 3-4; AT&T Oct. 22 Pricing *Ex Parte* Lener at 5-6

³²⁶ AT&T Oct. 7 Pricing *Ex Parte* Lener at 4; see also AT&T Oct. 22 Pricing *Ex Parte* Lener at 7.

³²⁷ AT&T Oct. 7 Pricing *Ex Parte* Letter at 4; AT&T Oct. 22 Pricing *Ex Parte* Letter at 5-6. According to AT&T, the option of supplying additional loops on demand has both a cost to Verizon and a value to competitive LECs. AT&T Oct. 7 Pricing *Ex Parte* Lener at 4; AT&T Oct. 22 Pricing *Ex Parte* Letter at 6.

¹²⁸ AT&T Oct. 22 Pricing *Ex Parte* Lener at 7 n.21

³²⁹ *Id.* at 1. See also Lener from A m D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 28, 2002) (Verizon Oct. 28 Pricing *Ex Parte* Lener) at 6 (noting that both AT&T and the New York Public Service Commission were aware of Verizon’s loop provisioning policy before the current New York rates were set).

³³⁰ Verizon Oct. 16 Loop Provisioning *Ex Parte* Lener at 6. See also Verizon Oct. 28 Pricing *Ex Parte* Lener at 6 (confirming that its loop provisioning policy applies equally to loops in both states).

benchmark analysis, it fails to quantify the extent to which competitive LEC orders for these loops are rejected.³³¹ We conclude, therefore, that Verizon's "no facilities" loop provisioning policy does not preclude a meaningful benchmark comparison of Verizon's Virginia loop rates to its New York loop **rates**.

(ii) **Noo-Loop Rates**

96. We have carefully considered the comments filed in *this* proceeding alleging that Verizon's Virginia UNE rates are not TELRIC-compliant. Aside from arguments made concerning the vintage of the cost data underlying Verizon's Virginia UNE rates, the majority of these allegations were made **for** the first time in reply comments filed by AT&T and WorldCom, and concern Verizon's Virginia switching rates. According to AT&T, the switch discount and switch investment data underlying Verizon's Virginia switching rates are stale and result in unreasonably high **rates**.³³² AT&T also argues that switch components have continued to evolve, to increase capacity and thus reduce unit costs.''' Further, AT&T notes that the mergers with Bell Atlantic and GTE have increased the purchasing power of Verizon, allowing it to negotiate lower switch prices, but that these savings are not reflected in Verizon's **rates**.³³⁴

97. In addition to these allegations, AT&T and WorldCom challenge the manner in which the current mix of new and growth switching discounts was determined by the Virginia Commission and maintain that the current switching rates reflect an inappropriate mix of replacement and growth **discounts**.³³⁵ WorldCom states that the switch discount mix was determined by assuming new switches would be purchased to meet demand over the next five years and that additions needed to meet demand growth after that point would come from growth **purchases**.³³⁶ AT&T supports WorldCom's challenge, and further argues that the Virginia Commission's selection of the 54 percent new and **46** percent growth mix was unexplained, unjustified, and inappropriate.'''

³³¹ See AT&T Oct. 22 Pricing *Ex Parte* Letter at 2

³³² AT&T Comments at 7; AT&T Pins Decl., paras. 6-7. AT&T notes that most of the cost data underlying Verizon's current rates date from 1997, and that its switching data reflect only such discounts **as** Verizon was able to achieve in the early- to mid-1990's. AT&T Comments at 7; AT&T Pins Decl., paras. 6-7.

³³³ AT&T Comments at 8; AT&T Pitts Decl., para. 8.

³³⁴ AT&T Comments at 8; AT&T Pitts Decl., para. 8

³³⁵ AT&T Reply at 6-8; WorldCom Comments at 18; WorldCom Reply at 5

³³⁶ WorldCom Comments at 18. WorldCom argues that this approach does not consider whether it is more cost-effective to set the size of the switch to meet some demand level other than that expected over the next five years. *Id.* WorldCom maintains that the result is switching prices far above what could be calculated **in** keeping with TELRIC. *id.* at 17.

³³⁷ AT&T Reply at 6-8. See **also** AT&T Supplemental Comments at 4-7; Supplemental Declaration of Michael R. Baranowski (AT&T Baranowski Supp. Decl.), paras. 16-21 (responding to Verizon's defense of the existing mix of (continued....))

98. AT&T also argues that Verizon's switching cost study modeled outmoded technology³³⁸ and that Verizon's Virginia switching rates result in a substantial over-recovery of switching investment.³³⁹ WorldCom argues that vertical features appear to be a high portion of the total usage-sensitive switching costs,³⁴⁰ and that Verizon fails to provide any cost justification for the vertical features contained in its cost model.³⁴¹ As stated above, we need not address the

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new and growth switching discounts). As discussed above, in its *Virginia Interim Pricing Order*, the Virginia Commission determined that switch discounts should reflect a mix of 85 percent new and 15 percent growth purchases, stating that this was "the best available incorporation of the necessary forward-looking technique appropriate for this proceeding." *Virginia Interim Pricing Order* at 11. In its *Virginia Pricing Revision Order*, however, without discussion of the justification or calculations offered in support, the Virginia Commission stated that it had determined that UNE "prices can be improved by revising the switching prices to reflect a switch equipment mix of 54 [percent] new (replacement) and 46 [percent] add-on." *Virginia Pricing Revision Order* at 2.

³³⁸ AT&T Reply at 6. AT&T alleges that Verizon's switching cost study models outmoded technology because it assumes that all integrated digital loop carrier lines will be served via TR-008 SLC-96 technology instead of GR-303 technology. AT&T Baranowski Reply Decl., paras. 10-11. According to AT&T, the cost and engineering advantages of GR-303 over TR-008 are "well known and widely accepted in the industry." AT&T Baranowski Reply Decl., para. 10. Verizon maintains that no party suggested the use of any GR-303 technology because that technology was not yet available or known when the cost studies and testimony were presented to the Virginia Commission. See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 26, 2002) (Verizon Sept. 26 Pricing *Ex Parte* Letter) at 13-14.

³³⁹ AT&T Reply at 5-6; AT&T Baranowski Reply Decl., paras. 3-8. AT&T argues that Verizon's recurring rates for switch utilization, if applied to projected utilization over the projected lives of Verizon's switching equipment in Virginia, would allow Verizon to recover more than twice the amount of its investment. AT&T Reply at 5-6; AT&T Baranowski Reply Decl., paras. 3-5. According to AT&T, this "massive over-recovery" is the result of the "bottom-up approach" used by Verizon, which relies on the unit cost outputs of the SCIS/MO model to build up the cost of a minute-of-use. The "bottom-up approach requires three separate sets of inputs into SCIS that are spread among multiple models to be consistent. AT&T Baranowski Reply Decl., para. 6. AT&T claims that these inputs do not take the same form in each of the models, and inconsistent inputs will produce incorrect results. AT&T Baranowski Reply Decl., para. 6. Verizon claims that the analysis submitted by AT&T is flawed in several respects, but fails to recalculate the analysis with corrections it deems appropriate. Verizon Sept. 26 Pricing *Ex Parte* Letter at 14-18. AT&T challenges Verizon's response and asserts that the reduced switching rates produce a 22.6 percent over-recovery of the forward-looking switch investment determined by the Virginia Commission. See AT&T Supplemental Comments at 3-4; AT&T Baranowski Supp. Decl., paras. 4-15.

³⁴⁰ WorldCom Reply at 5; WorldCom Frentrup Reply Decl., para. 6. WorldCom further questions why Verizon's shared switching costs differ so markedly between originating and terminating minutes-of-use. WorldCom Frentrup Reply Decl., para. 6 n.3. But see Verizon Sept. 26 Pricing *Ex Parte* Letter at 5-6 (arguing that this result is a function of cost allocation and the bottom-up approach used to assess costs).

³⁴¹ WorldCom Reply at 5; WorldCom Frentrup Reply Decl., paras. 5-7. Verizon admits that it assumed that the switch would have to include the capability for each competitive LEC to provide each of its customers with access to all 26 basic switching features. See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Sept. 20, 2002) (Verizon Sept. 20 Pricing *Ex Parte* Letter) at 1-2. Verizon states that it "modeled feature costs by determining, for each feature, how much processor capacity was required each time the particular feature is used, and multiplying that cost by the average frequency with which customers typically use such features." *Id.* at 2; Verizon Sept. 26 Pricing *Ex Parte* Letter at 8.

merits of these arguments here. In this proceeding, Verizon relies on reduced switching rates and demonstrates that these rates pass a benchmark analysis. Thus, even if these allegations regarding Verizon's superseded switching rates have merit, the fact that Verizon's revised Virginia UNE rates pass a benchmark comparison to rates that are TELRIC-compliant provides a basis for our finding that, despite these alleged errors in the rates established by the Virginia Commission, Verizon's current UNE rates fall within the range that a reasonable TELRIC-based rate proceeding would produce.

99. Non-Loop Benchmark. In conducting a benchmark analysis, we consider the reasonableness of loop and non-loop rates separately.” Where the Commission finds that the state commission correctly applied TELRIC principles for one category of rates, it will use a benchmark analysis to evaluate the rates of the other category. If, however, there are problems with the application of TELRIC for both loop and non-loop rates, then the same benchmark state must be used for all rate comparisons to prevent an incumbent LEC from choosing for its comparisons the highest approved rates for both loop and non-loop UNEs.³⁴³

100. As we discussed above, Verizon relies on a benchmark comparison of its UNE rates in Virginia to its UNE rates in New York, and we have determined that New York is an appropriate benchmark state for comparison purposes. In our benchmark analysis of Verizon's non-loop UNE prices, we compare (1) the percentage difference between its Virginia and New York UNE-platform per-line per-month prices for non-loop rate elements collectively, and (2) the percentage difference between Virginia and New York per-line per-month costs for these non-loop elements collectively, based on the Synthesis Model.” For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including tandem switching), and signaling.” We develop per-line per-month prices for these elements for Virginia and New York separately by multiplying the state-approved “rates” by per-line demand estimates. Rates for end office switching and transport are imposed on a minute-of-use (“MOU”) basis. We develop the per-line per-month overall demand for these usage-sensitive rate elements for Virginia and New York separately by first dividing total state-specific switched access lines into state-specific total annual MOU, based on dial

³⁴² See, e.g., *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 40; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 67; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27. Loop rates consist of charges for the local loop, and non-loop rates consist of charges for switching, signaling, and transport.

³⁴³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Missouri/Arkansas Order*, 16 FCC Rcd 20747, para. 58.

³⁴⁴ We adjust the costs derived from the Synthesis Model to make them comparable to WE-platform costs. See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249.

³⁴⁵ We also note that Verizon's New York non-loop rates contain both a digital and an analog port rate. For purposes of our benchmark analysis, we have used Verizon's New York digital port rate of \$2.57, rather than the analog port rate of 64.22, or any blend of the two rates. The New York rate structure uses the digital port rate of \$2.57 as the rate charged for ports that are purchased as part of the UNE-platform. *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 51 n.134.

equipment minutes (DEM), divided by 12 months. We then apply to each of the usage sensitive rate elements a percentage of this overall demand that is based on state-specific traffic assumptions supplied by Verizon regarding originating versus terminating, local intra-switch versus inter-switch, and tandem-routed versus direct-routed MOU.³⁴⁶ Having determined above that the New York rates are appropriate rates for the benchmark comparison, we compare Verizon's Virginia non-loop rates to the New York non-loop rates and find that Verizon's Virginia non-loop rates satisfy our benchmark analysis.'"

101. In addition to a non-loop benchmark analysis, AT&T argues that a switching-only benchmark analysis is appropriate under the circumstances present **here**.³⁴⁸ According to AT&T, it is appropriate to consider a switching-only benchmark analysis in addition to the usual comparison of non-loop rates when comparing a relatively dense state with a less densely populated state because the Synthesis Model substantially overstates transport costs in less densely populated states relative to more densely populated states.'" AT&T concludes that, as a result, any comparison substantially overstates any such cost justification for non-loop rate

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See Verizon Oct. 3 Pricing *Ex Parte* Lener at Confidential Attach. 3. *See also* Lener from AM D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-214** (filed Oct. 7, 2002) (Verizon Oct. 7 Pricing *Ex Parte* Lener) at **1-2**.

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Verizon's Virginia non-loop rates are approximately 7 percent higher than New York non-loop rates. Comparing the weighted average costs, we find that the Virginia non-loop costs are approximately 7 percent higher than the New York non-loop costs. Because the percentage difference between Verizon's Virginia non-loop rates and the New York non-loop rates does not exceed the percentage difference between Verizon's non-loop costs in Virginia and Verizon's non-loop costs in New York, we conclude that Verizon's Virginia non-loop rates satisfy our benchmark analysis. We note that, prior to Verizon's voluntary rate reduction, AT&T argued that Verizon's non-loop rates would fail a benchmark comparison to New York non-loop rates. AT&T Comments at 3; AT&T Pitkin Decl., para. 6. Because Verizon has since lowered its Virginia non-loop rates to meet a benchmark to New York non-loop rates, we need not address this argument. In addition, in an *ex parte* filed on October 22, 2002, Verizon asserts that its reduced switching rates (separate from transpon) compare favorably to the corresponding 271-approved switching rates in Texas, Oklahoma, and Louisiana. *See* Letter from AM D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 22, 2002) (Verizon Oct. 22 Pricing *Ex Parte* Letter) at 1.

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AT&T Pitkin Decl., para. 11 (stating that such an analysis should exclude the costs of transpon facilities and tandem switches, i.e., interoffice facilities, from the benchmark analysis, and focus on the central switching rate elements, i.e., the switch port, switch usage, switch features and signaling). In supplemental comments, AT&T argues that the Commission should consider a switching-only benchmark comparison as well as an aggregate non-loop analysis or, alternatively, consider whether Verizon's non-transport, non-loop rates were set in compliance with TELRIC. AT&T Supplemental Comments at 14. *See also* AT&T Supplemental Comments at 13-14 (arguing that it would be arbitrary and capricious for the Commission to apply its non-loop benchmarking approach in lieu of directly scrutinizing the reasonableness of Verizon's switching costs).

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AT&T Pitkin Decl., paras. 12-13. AT&T further maintains that, because the Synthesis Model overstates transport costs in every state, the model gives disproportionate weight to transport costs in any benchmarking analysis. According to AT&T, the problem is most acute, however, when the anchor benchmark state has significantly higher average line densities than the comparison state. *Id.*, para. 13. *See also* AT&T Supplemental Comments at 13-14 and Confidential Ex. 2 (attempting to demonstrate that the Synthesis Model tends to overstate transpon costs disproportionately as line density declines).

differences.³⁵⁰ AT&T also argues that TELRIC rates are calculated on the basis of individual elements and that Verizon must show that the rates for **each** of its UNEs complies with TELRIC principles.” AT&T contends that proper TELRIC pricing of each element is critical to ensuring that competitive LECs can continue expanding new technologies and new methods of entering local markets with various LNE combinations.³⁵²

102. For the reasons stated below, we do not agree with AT&T that alleged flaws in the Synthesis Model require Verizon to satisfy a switching-only benchmark analysis. AT&T attaches a chart to its Supplemental Comments that purports to demonstrate that the estimates of transport costs generated by the Synthesis Model, while roughly comparable in higher density states to unbundled transport rates set by state commissions, climb above the latter values in the lower density states.³⁵³ AT&T charts how the ratio of transport costs to state-approved transport rates varies with line density, but we are not convinced that this variation demonstrates any bias in the Synthesis Model. The state-approved unbundled transport rates used in AT&T’s analysis could fall anywhere within the range of rates that a reasonable application of TELRIC principles would produce; consequently, the ratio of transport costs derived from the Synthesis Model to state-approved transport rates may vary due to this range of rates.” For example, Virginia transport rates are 63 percent lower than New York transport rates, based on company-specific demand assumptions, while Virginia transport costs are approximately 82 percent higher than New York transport costs, based on the Synthesis Model. High ratios of transport costs to UNE transport rates, rather than demonstrating conclusively the existence of any bias in the Synthesis Model, may simply reflect the fact that some states have set transport rates at the high end of the reasonable range, while other states have set transport rates at the low end. Indeed, AT&T acknowledges that there are “variations among the costing approaches taken by each state

³⁵⁰ *Id.* para. 12

³⁵¹ AT&T Comments at 4. In support of its argument that the Commission must look at the rates for each individual element, AT&T cites to section 252(d)(1), which states that a BOC’s rates for a network element comply with checklist item two only if they are “based on the cost . . . of providing . . . the network element.” AT&T Comments at 4 (citing 47 U.S.C. § 252 (d)(1)) (emphasis in AT&T Comments). See also AT&T Supplemental Comments at 11-12.

³⁵² AT&T Pitkin Decl., para. 17; see AT&T Supplemental Comments at 12 (arguing that the potential for unbundling will not be realized unless each element can be ordered at an appropriate separate price). AT&T also conducted its own switching-only benchmark comparison and concluded that Verizon’s Virginia switching rates fail a benchmark comparison to its New York switching rates. AT&T Pitkin Decl., para. 24. In supplemental comments, AT&T argues that Verizon’s reduced switching rates still exceed Verizon’s switching prices in New York, on a cost-adjusted basis, by a substantial margin. AT&T Supplemental Comments at 14 and Confidential Ex. 1; AT&T Oct. 11 Pricing *Ex Parte* Lener at 1 and Confidential Ex. 1 (attaching a corrected version of Exhibit 1).

³⁵³ See AT&T Supplemental Comments at 13-14 and Confidential Ex. 2; Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 11, 2002) (AT&T Oct. 11 Pricing *Ex Parte* Lener) at 1 and Confidential Ex. 2 (attaching a corrected version of Exhibit 2).

³⁵⁴ *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4

commission in setting UNE prices” and that the values used in its analysis are “rough proxies.”” Moreover, AT&T confines its analysis to eight of the 13 Verizon study areas (not counting Verizon’s two wire centers in Connecticut and the former GTE operations), and excludes completely other BOC study areas. A sample of so few study areas may not produce a reliable measure of the relationship between the ratio of transport costs developed from the Synthesis Model to state-approved transport prices, on the one hand, and line density, on the other. We cannot agree, therefore, that AT&T’s analysis provides a “clear qualitative demonstration” of the inverse relationship between line density and the overstatement of transport costs, **as AT&T alleges.**³⁵⁶

103. AT&T also points out that the UNE transport costs supported by Verizon in the Virginia Arbitration Proceeding **are** “only about *one-third* the corresponding estimates generated by the Synthesis Model” and argues that this amounts to a concession by Verizon that the Synthesis Model overstates transport costs.” AT&T’s argument, however, ignores the critical difference between using the Synthesis Model (or any other model) to determine absolute UNE costs, and using it for the limited purpose of comparing relative cost differences between states. In section 271 proceedings, the Commission uses the Synthesis Model only for the latter purpose; we have not used the model to compare UNE rates set by a state commission to costs produced by the model. Indeed, the Commission has cautioned against using the Synthesis Model to set rates.” Moreover, the rates proposed by Verizon in the Virginia Arbitration proceeding have no bearing on the merits of using the Synthesis Model to compare relative costs. Verizon sponsored its own models for determining UNE loop, switching, and transport rates. The fact that in one instance, transport, Verizon’s models produced rates less than those produced by the Synthesis Model is no more (or less) relevant to our use of the Synthesis Model for purposes of cost comparisons than is the fact that in other instances (loops, switching), Verizon’s models produced rates that greatly exceed those produced by the Synthesis Model. Finally, **we** find AT&T’s arguments about the unreliability of the Synthesis Model to model transport costs somewhat ironic, **as** it was AT&T that sponsored a modified version of the Synthesis Model to set transport rates in the Virginia Arbitration proceeding.

104. The Commission developed an extensive record through a rulemaking proceeding over several years to support its conclusion that the Synthesis Model accurately reflects the

³⁵⁵ Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 23, 2002) (AT&T Oct. 23 Pricing *Ex Parte* Letter) at 3. *See also WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4 (stating that TELRIC may yield a broad range of rates).

³⁵⁶ AT&T Supplemental Comments at 14 n.14.

³⁵⁷ AT&T Oct. 23 Pricing *Ex Parte* Letter at 10 (emphasis in original); AT&T Supplemental Comments at 17.

³⁵⁸ See Verizon *Maine Order*, 17 FCC Rcd at 11675, para. 28 n.107; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084-85, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

relative cost differences between states.³⁵⁹ The differential produced by the cost model reflects variations in forward-looking costs based on objective criteria, such as density zones and geological conditions.'" AT&T was an active participant in that rulemaking. Our Synthesis Model, like any model, may not be perfect.³⁶¹ It is, however, the best tool we have for evaluating cost differences between states.'" In fact, in the context of universal service, AT&T has supported the Synthesis Model before the Commission and before the appellate courts.³⁶⁵ Moreover, the transport module of the Synthesis Model that AT&T criticizes is supported by AT&T in the Virginia Arbitration Proceeding and is taken directly from the HAI cost model, the cost model that AT&T has championed in numerous states for ratemaking purposes, including Virginia.³⁶⁴

105. A re-examination of the Synthesis Model is an immensely complicated inquiry not suited to the section 271 process.³⁶⁵ We could not consider AT&T's argument in isolation as we would have to consider other arguments concerning the accuracy of the Synthesis Model,

³⁵⁹ See *SWBT Kansas/Oklahoma*, 16 FCC Rcd at 6277, para. 84; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20455-56, paras. 41-42 (1999), *aff'd in part and rev'd in part on other grounds*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). AT&T argues that the "extensive record" developed in the rulemaking proceeding leading to the adoption of the Synthesis Model provides no justification for relying on the model because the rulemaking proceeding concerned universal service subsidy calculations, in which relative differences in transport costs play a relatively small part. AT&T Supplemental Comments at 15-16. The fact that transport costs represent a relatively small part of the universal service subsidy calculation produced by the Synthesis Model does not, by itself, suggest that the model does not accurately reflect transport costs or transport cost differences.

³⁶⁰ See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20170, para. 30 (1999), *aff'd*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

³⁶¹ As the D.C. Circuit has noted "the best must not become the enemy of the good." AT&T Oct. 23 Pricing *Ex Parte Lerner* at 9 (quoting *MCI Telecom. v. FCC*, 712 F.2d 517, 535 (D.C. Cir. 1983)).

³⁶² *Verizon New Hampshire/Delaware* Order, para. 47. Although AT&T suggests that the Synthesis Model "is clearly **not** the best available tool in the particular circumstances here," it argues, in that same paragraph, that the Commission should use the Synthesis Model to compare switching-only costs. AT&T Supplemental Comments at 16. Thus, AT&T is content to rely on the Synthesis Model to compare relative costs, if just disagrees with the level of cost aggregation. See *infra* para. 109. See also *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4 (stating that "[t]he FCC need not choose the 'optimal' benchmark, only a reasonable one").

³⁶³ See Letter from Ann D. Berkowitz, Project Manager, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-214 (filed Oct. 16, 2002) (Verizon Oct. 16 Benchmark *Ex Parte* Letter) at 14. AT&T disputes Verizon's claim that it has somehow "waived" any challenge to the model by supporting adoption of the model in earlier proceedings. AT&T Oct. 23 Pricing *Ex Parte Lerner* at 9-11.

³⁶⁴ In the Virginia state rate proceeding, AT&T and WorldCom submitted the Hatfield model (version 3.0), which is a prior version of the HAI cost model.

³⁶⁵ Indeed, AT&T concedes that any attempt to identify and resolve the alleged defect in the transport cost module of the Synthesis Model is beyond the scope of this proceeding. AT&T Supplemental Comments at 14.

including those raised by Verizon that the Synthesis Model understates switching costs in rural states.³⁶⁶ Given its complexity, breadth, and industry-wide significance, such an inquiry is simply not feasible within the 90-day review period required by Congress.³⁶⁷ As the Commission made clear in the *SWBT Texas Order*, Congress designed section 271 proceedings as “highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular [s]tate at a particular time. Such fast-track, narrowly focused adjudications . . . are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability.”³⁶⁸ Clearly, any conclusion concerning the ability of the Synthesis Model accurately to account for cost differences between states would have industry-wide significance, both with respect to local competition and universal service.³⁶⁹ Accordingly, we decline to benchmark Verizon’s Virginia switching rates independently based on a claim that the Synthesis Model fails to accurately reflect costs and, hence, cost differences.

106. Further, although we do not dispute that TELRIC rates are calculated on the basis of individual elements, we find that conducting a benchmark analysis of non-loop elements together, as the Commission **has** done in all prior section 271 orders relying on a benchmark comparison, is consistent with **our** obligations under the Act. In adjudicating a section 271 application, the Commission performs a general assessment of compliance with TELRIC principles.³⁷⁰ Our benchmark analysis is a method of making the general assessment as to whether UNE rates **fall** within the range of rates that a reasonable application of TELRIC principles would produce. We make only a general assessment of UNE rates in the context of a section 271 proceeding, as the Commission could not, as a practical matter, evaluate every single individual UNE rate relied upon in a section 271 proceeding within the 90-day timeframe. AT&T **asks** us to examine switching rates only, and makes its statutory arguments in that limited context. But, under AT&T’s interpretation of the statute, the Commission may be

³⁶⁶ See Verizon Oct. 16 Benchmark *Ex Parte* Lener at 13, 17. See also *Verizon New Hampshire/Delaware Order*, para. 49 (discussing Verizon’s claim that the Synthesis Model understates switching costs in some instances).

³⁶⁷ *Verizon New Hampshire/Delaware Order*, para. 49. Indeed, an evaluation of AT&T’s criticisms alone would be a complicated endeavor.

³⁶⁸ *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 25

³⁶⁹ *Verizon New Hampshire/Delaware Order*, para. 49. We are not persuaded by AT&T’s contention that the relief it **seeks** would not compromise the ability of the Commission to rely on the Synthesis Model in other contexts. AT&T Supplemental Comments at 17-18. AT&T argues that, to justify consideration of the additional evidence it submitted, the Commission need only find that: “(1) an issue has been raised about [the] accuracy of the Synthesis Model transport cost estimates, and (2) rather than resolve the issue now, the Commission will consider the supplemental evidence tendered by AT&T.” AT&T Supplemental Comments at 18. The relief sought by AT&T **would** be necessary only upon a finding that the Synthesis Model does not in all instances accurately reflect cost differences. Given that the Synthesis Model is designed to account for relative cost differences between states for the purpose of apportioning universal service support, **we** are not persuaded by AT&T’s attempt to downplay the potential implications of the conclusion inherent in the relief sought, especially since such a conclusion **would** have industry-wide significance beyond the section 271 application process.

³⁷⁰ See *Sprint v. FCC*, 274 F.3d at 556; *AT&T Corp. v. FCC*, 220 F.3d at 615

required to evaluate individually every UNE rate relied upon in this proceeding. Given the large number of rates at issue in a section 271 proceeding'" and the 90-day timeframe, we find that our interpretation of our obligation under the statute is a reasonable one.³⁷²

107. Although AT&T cites to section 252(d)(1) and to section 271(c)(2)(B) in support of its current preferred version of the benchmark test,'" we note that only section 271(c)(2)(B)(ii) defines our role in this proceeding. Under that subsection, we must decide whether a BOC provides access to network elements "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁷⁴ In so deciding, we must exercise our judgment within the context of the compressed 90-day deadline imposed by section 271.³⁷⁵ Under section 271, our role is to make a generalized decision as to whether network elements are available in accordance with section 252(d)(1). This is not, and cannot be, a *de novo* review of state-rate setting proceedings.³⁷⁶

108. In addition, we do not believe that the statutory language supports AT&T's view that section 252(d)(1) clearly requires us to evaluate individually the checklist compliance of each UNE rate on an element-by-element basis. AT&T argues that, because section 252(d)(1) refers to the term "network element" in the singular, a BOC can comply with checklist item two of section 271 only if it shows "that the rates for each of its network elements comply with TELRIC principles."'" The relevant statutory provisions, however, do not refer to the term "network element" exclusively in the singular and, thus, we do not believe that the statute unambiguously requires this Commission to perform a separate evaluation of the rate for each network element in isolation. Section 252(d)(1) states, in relevant part, that "[d]eterminations by a State commission of . . . the just and reasonable rate for *network elements* for purposes of [section 251(c)(3)] . . . shall be based on the cost . . . of providing the . . . network element."'" In

³⁷¹ For instance, in support of its Virginia section 271 application, Verizon filed 16 pages of rate sheets containing numerous rates on each sheet. *See* Verizon Woltz/Garzillo/Prosini Decl., Anach. 3.

³⁷² Indeed, some states do not have separate rate elements for some UNEs that other states have. For example, New York has a separate rate element for signaling and end office trunk ports; however, New Jersey and Delaware include these elements in the per-minute switching rate. *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12297, para. 52.

³⁷³ AT&T Comments at 4; AT&T Supplemental Comments at 11-12.

³⁷⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

³⁷⁵ *Cf. AT&T Corp. v. FCC*, 220 F.3d at 621-23; *WorldCom, Inc. v. FCC*, 2002 WL 31360443, at 4 (recognizing that the time constraints imposed by the 90-day limit preclude a full-scale ratemaking by the Commission).

³⁷⁶ *Sprint v. FCC*, 274 F.3d at 556. Our role is not to set UNE rates but, rather, to make a general assessment as to whether the rates set by the state comply with the statute. *Id.* *See also WorldCom, Inc. v. FCC*, 2002 WL 31360443, at *4.

³⁷⁷ AT&T Comments at 4.

³⁷⁸ 47 U.S.C. § 252(d)(1) (emphasis added),

addition, section 271(c)(2)(B)(ii) requires a BOC to provide "[n]ondiscriminatory access to *network elements* in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁷⁹

109. Notably, AT&T's own proposed method of benchmarking is inconsistent with its argument that the text of the Act *requires* evaluating each element in isolation. Specifically, AT&T argues that the Commission should separately compare three categories of elements: loops, non-loop, and switching.³⁸⁰ Yet these categories — like the Commission's approach -- entail aggregating distinct elements for benchmarking purposes; for example, AT&T's "switching" category includes costs associated with signaling," and the "non-loop" category includes costs associated with tandem switching and shared transport.³⁸² Thus, AT&T effectively concedes that *some* degree of aggregation is appropriate in conducting a benchmarking analysis; it simply disagrees about the optimum level of aggregation. For the reasons set forth here and in our prior orders, we construe the statute to permit a BOC to show that it complies with checklist item two based on a benchmark analysis of non-loop elements in the aggregate.

110. Our long-standing practice of benchmarking non-loop rates in the aggregate is a reasonable exercise of our judgment in making the general assessment of whether rates fall within the reasonable range that application of TELRIC principles would produce.³⁸³ The benchmark test as presently constituted reflects the practicalities of how UNEs are purchased and used. Because the transport and switching UNEs are, to our knowledge, not purchased separately in the Verizon states, for us to implement a UNE-by-UNE benchmark test for these elements would "promote form over substance, which, given the necessarily imprecise nature of setting TELRIC-based pricing, is wholly unnecessary."³⁸⁴ Our benchmark analysis allows us to conduct a competitively meaningful analysis based on the way UNEs are actually purchased, as discussed below, and we find that this approach is reasonable under the circumstances.³⁸⁵

³⁷⁹ 47 U.S.C. § 271(c)(2)(B)(ii) (emphasis added)

³⁸⁰ See AT&T Pitkin Decl., paras. 11, 17 (urging the Commission to perform an independent benchmark analysis of only Verizon's Virginia switching rates in addition to the non-loop benchmark analysis).

³⁸¹ AT&T Pitkin Decl., para. 11

³⁸² See *supra* discussion of "non-loop" elements, para. 100.

³⁸³ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9001, para. 25; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 51

³⁸⁴ *Sprint v. FCC*, 274 F.3d at 561

³⁸⁵ ATBT disputes the notion that it and other competitive LECs have "no standing to raise the issue because they do not currently buy unbundled switching separately from unbundled transport and other non-loop elements." AT&T Supplemental Comments at 15. The Commission has not found that AT&T or other competitive LECs lack standing because of the way UNEs are purchased. Rather, we find it most appropriate to consider the costs of non-loop UNEs in the aggregate because it reflects the commercial reality of how non-loop UNEs are purchased.

111. As noted above, as a practical matter, combining unbundled switching and unbundled transport for benchmarking purposes makes sense because competing LECs throughout Verizon's territory invariably purchase them together.³⁸⁶ Indeed, in the *UNE Remand Order*, the Commission acknowledged that "shared transport is technically inseparable from unbundled switching" and, thus, requesting carriers do not have the option of using unbundled shared transport without also taking unbundled switching.³⁸⁷ Although it is theoretically possible to take unbundled switching without taking unbundled transport, it is uncontroverted that competitive LECs have not ordered switching and shared transport independently in Virginia or in any other Verizon state.³⁸⁸ We are not convinced that considering switching in combination with transport ignores the "basic competitive policies that are implicit in any rational economic interpretation of [s]ection 271," as AT&T alleges.³⁸⁹

112. AT&T maintains that proper pricing of each element is critical to ensuring that competitive LECs can continue expanding new technologies and new methods of entering local markets." Nevertheless, AT&T failed to provide any evidence that it, or any other competitive LEC, orders switching separate from transport in any state with TELRIC-compliant UNE rates. Thus, we have no evidence that the relief sought by AT&T would effectuate a change in the way competitors purchase non-loop elements. Moreover, in a prior section 271 proceeding, AT&T presented its rate analysis in terms of the cost of "non-loop" elements, a recognition that this is, in fact, how the elements are purchased and, therefore, how they should be reviewed by the Commission.³⁹¹ Furthermore, benchmarking non-loop elements in the aggregate may be useful to help account for rate structure differences between states.³⁹² For these reasons, we decline here to disturb the Commission's well-established precedent of combining non-loop elements for the purposes of conducting a benchmark comparison. Because we find that using a non-loop benchmark is reasonable, we need not consider whether Verizon passes a stand-alone switching benchmark comparison.

³⁸⁶ *Verizon New Hampshire/Delaware Order*, para. 54; Verizon Oct. 16 Benchmark *Ex Parte* Lener at 7.

³⁸⁷ *UNE Remand Order*, 15 FCC Rcd at 3863, para. 371

³⁸⁸ *Verizon New Hampshire/Delaware Order*, para. 54; Verizon Oct. 16 Benchmark *Ex Parte* Lener at 8.

³⁸⁹ AT&T Pitkin Decl., para. 17.

³⁹⁰ *Id.*; see also AT&T Pitkin Decl., paras. 17-22 (discussing why it is critical to the future path of competition to price these elements individually). According to AT&T, "[t]he competitive potential of unbundling switching and transport will remain stillborn . . . unless each element can be ordered [at] an appropriate separate price." *Id.*, para. 21.

³⁹¹ In the Verizon Massachusetts section 271 proceeding, the first proceeding where the Commission conducted a non-loop benchmark, AT&T presented the non-loop elements in the aggregate for comparison. See *Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, AT&T Comments at 20.

³⁹² See *Verizon New Jersey Order*, 17 FCC Rcd at 12297, para. 52

113. Prior to Verizon's reduction of its Virginia switching rates, AT&T also argued that the benchmark analysis contained in Verizon's application is incomplete without a non-loop benchmark analysis.³⁹³ It contended that the Commission should not permit Verizon to limit its benchmark comparison to loop rates alone and that the Commission "has never approved a [s]ection 271 application on the basis of such an incomplete comparison . . ."³⁹⁴ Although Verizon now relies on a non-loop benchmark to demonstrate checklist compliance, we disagree with AT&T that Verizon's benchmark comparison would have been incomplete without a non-loop analysis. In performing a benchmark analysis, we consider the reasonableness of loop and non-loop rates separately, and where the Commission finds that the state commission correctly applied TELRIC for one category of rates, it will only compare the rates of the other category.³⁹⁵ Thus, the Commission has recognized that a benchmark analysis may be used to assess whether loop rates, non-loop rates, or both sets of LUNE rates are within a range of rates that reasonable application of TELRIC principles would produce. Indeed, in the *SWBT Kansas/Oklahoma Order*, the Commission approved the application based, in **part**, on a benchmark of loop rates only.³⁹⁶ Moreover, the Commission has relied on a benchmark comparison of only non-loop rates in other section 271 orders.³⁹⁷ For this reason, we find no merit in AT&T's argument.

114. **True-Up.** In its application, Verizon offers to true-up its switching rates to switching rates ultimately adopted in the Virginia Arbitration Proceeding.³⁹⁸ Specifically, Verizon states that it has agreed to make any switching rates set during the Virginia Arbitration

³⁹³ AT&T Comments at 3-4 (arguing that the Commission has never approved a section 271 application on the basis of benchmark comparison to loop rates alone). See also WorldCom Comments at 17 (stating that Verizon failed to include a benchmark comparison of non-loop rates and does not submit a benchmark comparison of loop and non-loop rates combined).

³⁹⁴ AT&T Comments at 3-4. AT&T also states that "[w]here, as here, the applicant's non-loop rates are higher (on a cost adjusted basis) than those in a valid benchmark state, the applicant must prove – with specific cost evidence – that its non-loop rates are appropriately cost based." AT&T Comments at 5. AT&T has the analysis backwards. As the Commission made clear in numerous section 271 orders, a benchmark analysis is not conducted if there are no basic TELRIC violations or clear errors on substantial factual matters. The benchmark analysis is applied to provide confidence that a rate, despite potential TELRIC errors, falls within a range that a reasonable application of TELRIC principles would produce. See *Verizon New Jersey*, 17 FCC Rcd at 12295, para. 49; *BellSouth Georgia/Louisiana Order*, paras. 24-25; *Verizon Vermont Order*, 15 FCC Rcd at 7639, para. 26.

³⁹⁵ *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 40; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *SWBT Missouri/Arkansas Order*, 16 FCC Rcd at 20747, para. 58.

³⁹⁶ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6278, para. 87, *aff'd* in *relevant part*, *Sprint v. FCC*, 274 F.3d at 561.

³⁹⁷ See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12299, para. 55; *Verizon Rhode Island Order*, 17 FCC Rcd at 3327, para. 55.

³⁹⁸ Verizon Virginia Application at 3, 52; Verizon Woltz/Garzillo/Prosini Decl., paras 50, 76, 79; Verizon Oct. 3 Pricing Ex Parte Lener at 1 (confirming that Verizon will true-up the reduced switching rates to those switching rates adopted in the Virginia Arbitration Proceeding).

Proceeding effective as of August 1, 2002, the date of its Virginia section 271 application.''' Thus, Verizon explains that the rates competitive LECs will pay for switching during the course of this application are the rates that will be established in the Virginia Arbitration proceeding.⁴⁰⁰ The fact that competitive LECs will have the benefit of these updated TELRIC-compliant rates as of **August 1, 2002** provides further assurance that the age of Verizon's current switching rates and the data underlying those rates does not require a finding of checklist noncompliance.

115. WorldCom asserts that competitive LECs are entitled to cost-based rates now, not above-cost rates with subsequent refund.''' Instead of a true-up, WorldCom argues that Verizon should voluntarily reduce its UNE prices prior to Commission approval of the section 271 application.''' AT&T maintains that the barrier to competition created by unreasonable UNE prices is not eliminated by the possibility that an unknown number of Verizon's existing UNE rates may be adjusted by unknown amounts at some time in the future.⁴⁰³ AT&T notes that this true-up proposal does not involve a small subset of rates, as has been the case in prior section 271 applications that the Commission has granted, but the entire universe of UNEs.⁴⁰⁴ Because we do not rely on Verizon's promise of a true-up to find checklist compliance and because Verizon voluntarily reduced its Virginia non-loop UNE rates to meet a benchmark to New York rates, we need not address the merits of these arguments.

116. *Switching Rare Structure.* Verizon's switch usage rate includes costs for vertical features.⁴⁰⁵ WorldCom asserts that a majority of the switch usage cost in Verizon's model reflects the cost of switch features alone, and complains that the inclusion of features costs in usage charges is inappropriate.⁴⁰⁶ Specifically, WorldCom challenges the Virginia Commission's

³⁹⁹ Verizon Woltz/Garzillo/Prosini Decl., paras. 76. See *also* Verizon Oct. 3 Pricing *Ex Parte* Lener at 1

⁴⁰⁰ Verizon Virginia Application at 52-53

⁴⁰¹ WorldCom Comments at 18-19.

⁴⁰² WorldCom Comments at 16. According to WorldCom, Verizon cannot claim that it will incorporate Commission-ordered rates into new interconnection agreements in a matter of weeks because the Commission has not yet issued its pricing decision in the Virginia Arbitration Proceeding. *Id.* WorldCom also points out that Verizon may appeal the arbitration decision, causing further delay. WorldCom Comments at 19.

⁴⁰³ ATBT Supplemental Comments at 10; see AT&T Comments at 10. ATBT argues that Verizon has not addressed this point. ATBT Supplemental Comments at 10.

⁴⁰⁴ ATBT Comments at 10-11; ATBT Supplemental Comments at 10.

⁴⁰⁵ Verizon Woltz/Garzillo/Prosini Decl., para. 64; Verizon Sept. 20 Pricing *Ex Parte* Lener at 1.

⁴⁰⁶ WorldCom Reply Comments at 5; WorldCom Frentrup Reply Decl., para. 4.

requirement that features costs, which primarily reflect the cost of software that enables the features, be recovered through switch usage rates.⁴⁰⁷

117. As we stated in the *Verizon New Jersey Order*, although we have approved section 271 applications in states that allow for recovery of vertical features through the port charges, we have never found that this is the only TELRIC-compliant method for doing so.⁴⁰⁸ The Commission's rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges⁴⁰⁹ and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges "if the state commission finds that such rates reasonably reflect the costs imposed by the various users."⁴¹⁰ In the *Local Competition First Report and Order*, the Commission recognized that it is appropriate to recover the costs of shared facilities from customers sharing the facility through either usage-sensitive or flat-rated charges.⁴¹¹ The Commission's rules also provide that local switching costs shall be recovered through a combination of a flat-rated charge for line ports, which are dedicated facilities, and one or more flat-rated or per-minute usage charges for the switching matrix and trunk port, which are shared facilities.⁴¹²

118. WorldCom does not contend that vertical features are provided over wholly dedicated facilities, nor has it provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the Virginia Commission could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The Virginia Commission's decision to allow the recovery of such costs in the per-minute switching rate thus complies with our rate structure rules, and we find no TELRIC error on this issue.

119. Further, AT&T argues that Verizon has improperly allocated the "getting started costs" to the minute-of-use rate and feature rate elements.⁴¹³ According to AT&T, these costs should be assigned to the fixed rate element because the switch processor utilization is such that

⁴⁰⁷ WorldCom Frentrup Reply Decl., paras. 3-4. To the extent that these costs are not already included in the base cost of the switch, WorldCom argues that any feature costs should be recovered in a per line charge such as the port, not the per-minute switch usage rates. *Id.*

⁴⁰⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12292, para. 41. See also *Verizon Sept. 26 Pricing Ex Parte Lener* at 8 (arguing that feature costs are shared costs and are appropriately recovered on a usage-sensitive basis).

⁴⁰⁹ 47 C.F.R. § 51.507(b).

⁴¹⁰ *Id.* § 51.507(c).

⁴¹¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15878-79, paras. 755, 757; 15905, para. 810.

⁴¹² *Id.* at 15878, para. 810; 47 C.F.R. § 51.509(b).

⁴¹³ AT&T Reply at 6; AT&T Baranowski Reply Decl., para. 9.

traffic could continue to grow without exhausting the processor.” AT&T claims that this misassignment results in “severe cost over-recovery as minutes grow and Verizon collects increased revenues, but its fixed costs remain static.”⁴¹⁵ Verizon responds that these shared switch resources do vary with usage and that the Commission typically defers to the states on questions of cost allocation.⁴¹⁶

120. We have reviewed AT&T’s claim that the switching cost allocation adopted by the Virginia Commission constitutes a TELIUC violation, and we conclude that the Virginia Commission did not commit any clear error by allowing Verizon to recover its “getting started costs” on an MOU basis. In establishing prices, the state commissions retain the discretion to consider a variety of factors.” This issue is not addressed in the Virginia Commission’s proceeding establishing UNE rates and AT&T did not raise this issue with the Virginia Commission.

121. The switch processor is a shared facility and our rules explicitly grant states the discretion to recover the costs of shared facilities on a usage-sensitive basis. As discussed above,⁴¹⁸ the Commission’s rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges⁴¹⁹ and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges “if the state commission finds that such rates reasonably reflect the costs imposed by the various users.”⁴²⁰ This Commission did not prescribe a specific allocation of switching costs between port charges and per-MOU charges, thus the states retain the flexibility to adopt an allocation within a reasonable range.⁴²¹ Because some portion of switching costs is fixed, an allocation of 100 percent of the switching costs to the MOU element would be unreasonable per se; however, based on the record, we find that the

⁴¹⁴ AT&T Baranowski Reply Decl., para. 9. AT&T further argues that removing calls or features from the switch will not result in a decline in processing costs. *Id.*

⁴¹⁵ *Id.* AT&T adds: “Verizon acknowledged this in Massachusetts when it determined to exclude getting started costs from the reciprocal compensation rate because additional traffic did not cause any incremental getting started cost.” *Id.* at n. 8.

⁴¹⁶ Verizon Sept. 26 Pricing *Ex Parte* Letter at 8-10. Verizon further notes that the current Virginia rates presume an almost identical proportion, i.e., 66 percent traffic sensitive and 34 percent non-traffic sensitive, than those approved in the *Verizon Maine Order* and *BellSouth Alabama/Kentucky/Mississippi/North Carolina/South Carolina Order*. *Id.* at 9.

⁴¹⁷ *Vernon Maine Order*, 17 FCC Rcd at 1676, para. 29; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59, *aff’d*, *Sprint v. FCC*, 274 F.3d at 556; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15559, para. 114.

⁴¹⁸ See discussion para. 117, *supra*

⁴¹⁹ 47 C.F.R. § 51.507(b)

⁴²⁰ *Id.* § 51.507(c).

⁴²¹ *Verizon Maine Order*. 17 FCC Rcd at 1676, para. 29

Virginia Commission committed no clear error in allocating getting started costs to the MOU rate element. Further, the voluntary rate reduction made by Verizon was only to the per-MOU rate, thereby increasing the percentage of costs recovered through the fixed port rate.

e. Non-Recurring Charges

122. As stated above, the Virginia Commission's pricing proceeding did not establish the rates for all network elements that Verizon is currently required to provide to competitive carriers, including elements this Commission established in the *UNE Remand Order*.⁴²² In lieu of state-established rates, Verizon determined the "proxy rates" by using one of the three methods described above (i.e., comparable Virginia-established UNE rates, cost-adjusted New York rates, or New York rates without any cost-adjustment).⁴²³ If, however, Verizon was charging a lower rate to any competitive carrier that was purchasing the element pursuant to a Virginia interconnection agreement at the time Verizon adopted the proxy rates, Verizon adopted that lower rate.⁴²⁴

123. Some of the commenters argue against Verizon's use of proxy rates generally.⁴²⁵ For example, AT&T contends that the rates for some UNEs, such as those established in the Commission's *UNE Remand Order*, were not adjudicated in the Virginia Commission's pricing proceeding or in any other proceeding since and, therefore, are not valid.⁴²⁶ We reject this threshold challenge because, as Verizon points out, this Commission has, in a number of previous section 271 proceedings, approved rates that had not been reviewed by the state commission in the applicant state.⁴²⁷ Therefore, we reject AT&T's argument that Verizon's use of proxy rates is *per se* invalid.

⁴²² See *supra* para. 70. Verizon notes the Virginia Commission established UNE rates for 57% of all rate elements, including most of the key rates relating to loops, switching, and transpon. Verizon Virginia Reply, App. A, Tab C, Reply Declaration of Robert W. Woltz, Jr., Patrick A. Garzillo, and Marsha S. Prosini (Verizon Woltz/Garzillo/Prosini Reply Decl.), para. 32.

⁴²³ See *supra* paras. 71-73. Verizon notes that, of all the rate elements, 31% were established by comparable state-determined UNE rates, 2% by cost-adjusted New York rates, and 5% by New York rates without cost-adjustment. Verizon Woltz/Garzillo/Prosini Reply Decl., para. 32.

⁴²⁴ See *supra* paras. 71-73. Verizon notes that the remaining 5% of all the rate elements were established by using the lower rates for elements that were being purchased from existing Virginia interconnection agreements. Verizon Woltz/Garzillo/Prosini Reply Decl., para. 32.

⁴²⁵ AT&T Comments at 10; Cavalier Comments at 11; Covad Comments at 20-22.

⁴²⁶ ATBT Comments at 10.

⁴²⁷ See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82 (finding that the Oklahoma rates adopted as a whole from Texas were within the reasonable range that application of TELRIC principles would produce); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 2075 1-52, paras. 67-68, 75 (finding that the Arkansas rates adopted as a whole from Kansas were within the reasonable range that application of TELRIC principles would produce); *Verizon Massachusetts Order*, 16 FCC Rcd at 8999-9001, paras. 21-25 (finding that Verizon could rely on (continued ...))

124. Cavalier also challenges Verizon's use of proxy rates in general because Verizon "simply described how it had set 'proxy prices.' and [did] not show that its prices were TELRIC-compliant."⁴²⁸ As detailed below, we find that Verizon's use of proxy rates produced rates that are within the range that a reasonable application of TELRIC principles would produce, and, therefore, we reject Cavalier's argument.

125. As Verizon noted, the majority of the proxy rates – more than 70 percent – were established by adopting rates that were found to be TELRIC-compliant by the Virginia Commission for elements that involve the same or similar functions and the same or similar activities (i.e., comparable elements).⁴²⁹ Verizon argues that this approach is consistent with the Commission's previous findings that it is appropriate for one state to adopt the rates established in a different state under the same circumstances.⁴³⁰ We conclude that the rates established pursuant to this method are valid for **several** reasons. First, no commenter challenges the proxy rates established via this method. Rather, commenters focused primarily on the proxy rates based on comparable New York rates. Second, no commenter alleges any TELRIC error with respect to the **rates** established by the Virginia Commission that Verizon later adopted **as** proxy rates for elements not addressed in the state pricing proceeding. Third, no party challenges Verizon's assertion that the elements used as proxies involve the same or similar work functions and activities. Therefore, we conclude that the lack of review by this Commission or by the Virginia Commission does not, by itself, render these rates invalid.

126. For the rates for UNEs that did not have comparable Virginia elements, Verizon selected the rates recently adopted in New York, a choice that some commenters challenge as inappropriate surrogates for Virginia rates. Covad *makes three* arguments against Verizon's use of New York rates: First, Covad objects to Verizon's use of the New York rates that were adopted by the New York Commission on January 28, 2002, which have never been reviewed for TELRIC compliance by this Commission.⁴³¹ Second, Covad argues that the New York rates are not appropriate surrogates for Virginia because the network and back office operations of the old New York Telephone Company are different than those of the old Chesapeake and Potomac

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New York rates in adopting rates in Massachusetts); *Verizon Rhode Island Order*, 17 FCC Rcd at 3314-15, 3324-27, paras. 26-27, 47-53 (finding the switching rates voluntarily proposed by Verizon based on the latest New York rates were within the reasonable range that application of TELRIC principles would produce); *Verizon New Jersey Order*, 17 FCC Rcd at 12303, para. 65 (finding the hot cut rate voluntarily adopted by Verizon was within the reasonable range that application of TELRIC principles would produce). *See also* Verizon Virginia Reply at 53 n.42.

⁴²⁸ Cavalier Comments at 11. Specifically, Cavalier challenges the decision **by** the Virginia Hearing Examiner to dismiss Cavalier's pricing concerns **as** more appropriately handled in an arbitration or generic pricing case. *Id.* (citing Virginia Hearing Examiner Report at 91).

⁴²⁹ *See* Verizon Virginia Application at 53; Verizon Woltz/Garzillo/Prosini Decl., para. 41.

⁴³⁰

Verizon Virginia Application at 54; Verizon Virginia Reply at 62-63 (citing *SBWT Arkansas/Missouri Order*, 16 FCC Rcd at 20756, para. 75).

⁴³¹ Covad Comments at 21

Telephone Company (C&P Telephone).⁴³² Instead of using New York, Covad suggests that Verizon should have picked a state, such as Maryland, where Verizon's network evolved from the same C&P Telephone system as an appropriate surrogate for at least some proxy element rates, including loop qualification and conditioning.” Third, Covad asserts that Verizon simply “picked New York out of a hat” or chose New York because its rates for some elements are among the highest in the Verizon territory.⁴³⁴

127. We disagree with Covad's argument that Verizon should not have used the latest New York rates because this Commission has not specifically reviewed them for TELRIC compliance. As Verizon noted, the Commission has found that a state commission may, in appropriate circumstances, consider, for comparison purposes, rates in another state that the Commission has previously found to be based on TELRIC principles.⁴³⁵ The Commission has also found, in the context of the New York section 271 proceeding, that New York rates for UNEs were **within** a range that the reasonable application of TELRIC principles would produce.⁴³⁶ Moreover, the Commission has previously noted, in the context of benchmarking, that the New York Commission has been very thorough in its pricing proceedings and has demonstrated a “commitment to accurate, cost-based rate making.”” We find no reason to believe this is not true for the latest New York rates. Finally, we note that the commenters fail to offer any evidence that the latest New York rates reflect **any** TELRIC error or otherwise fall outside a reasonable TELRIC range. From these facts, we conclude that, in the absence of action by the Virginia Commission, it was not inappropriate as a threshold matter for Verizon to adopt rates set by the New York Commission in some instances.

128. We also reject Covad's argument that Verizon should have chosen a state, such as Maryland, where Verizon's network evolved from the same C&P Telephone system as an appropriate surrogate for at least some proxy element rates. Neither Covad nor any other party offered any specific evidence to demonstrate that Verizon's Virginia and New York networks are so different that the elements at issue would not involve similar work functions and work

⁴³² *Id.*

⁴³³ *Id.* at 22-25

⁴³⁴ *Id.* at 21.

⁴³⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20751-52, paras. 67-68. In fact, the Commission has even encouraged “states with limited resources to take advantage of the efforts devoted by New York and Texas in establishing TELRIC-compliant prices, by relying where appropriate on the existing work product of those states. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276-77, para. 82 n.244.

⁴³⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 4081-82, 4084-85, paras. 238, 245.

⁴³⁷ *Verizon Virginia Reply* at 66 (citing *Verizon Rhode Island Order*, 17 FCC Rcd at 3326, para. 52). See also *AT&T Corp. v. FCC*, 220 F.3d at 616 (stating the New York Commission possesses a considerable degree of expertise and has done significant amount of background work in pricing proceeding). Verizon states that competitive LECs have even “championed [New York] as the gold-standard.” *Verizon Virginia Reply* at 66.

activities.⁴³⁸ Without any specific evidence to the contrary, we reject the claim that New York rates are inappropriate because Verizon's New **York** network stems from different corporate lineage than Verizon's Virginia network. and that Verizon should have chose a state from the former C&P Telephone system.

129. Finally, we reject Covad's claim that Verizon chose New **York** rates because they *are* among the highest in Verizon's territory. In response to this argument, Verizon produced a comparison of rates for the proxy elements adopted from New **York** and those from the rest of the states in Verizon's territory.⁴³⁹ Verizon maintains that this comparison demonstrates that Verizon could have obtained higher rates by using a state other than New **York**.⁴⁴⁰ As Verizon itself acknowledges, while some of the New **York** rates may be higher than those in other Verizon states, many of the rates are lower and, in fact, in a few cases, are significantly lower than in other Verizon states.⁴⁴¹ With regard to Covad's specific claim that Verizon should have adopted certain rates from Maryland rather than New **York**, we agree with Verizon that the rate comparison demonstrates that Verizon derived no systematic advantage from using New **York** rates rather than Maryland rates.⁴⁴² In sum, we find no evidence that Verizon intentionally chose New **York** rates to achieve a competitive advantage. Therefore, based on the evidence in the record and the lack of any specific challenge to a particular rate, we conclude that it was reasonable for Verizon to have selected the latest New **York** rates in the absence of rates set by the Virginia Commission.

130. In addition to its challenge to Verizon's use of New **York** rates, Covad opposes the Verizon's "alternative" method of choosing a rate that a competitive LEC was paying at the time the proxy rates were established if it **was** lower than the proxy rate.⁴⁴³ Covad first urges the Commission to reject negotiated rates as appropriate substitutes for TELRIC-based rates because TELRIC requires rates based on a forward-looking cost methodology using a fully-developed

⁴³⁸ Moreover, when it was feasible, Verizon adjusted for cost differences between the states. Such a cost-adjustment was not feasible for some non-recurring UNEs because the Synthesis Model does not include non-recurring activities. Verizon Woltz/Garzillo/Prosini Decl., para. 39.

⁴³⁹ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38 & An. 2.

⁴⁴⁰ *Id.*

⁴⁴¹ Verizon Virginia Reply at 66; Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38 & An. 2. For example, the costs of initial and additional provisioning of platform migration are significantly lower in New York than in Maryland (*i.e.*, \$1.18 vs. \$4.26 for initial provisioning, and \$1.13 vs. \$4.09 for additional provisioning). Verizon Woltz/Garzillo/Prosini Reply Decl., An. 2. Likewise, the initial and additional installation costs for 2- and 4-wire sub-loop migration are lower in New York than Maryland. *Id.*

⁴⁴² Verizon Woltz/Garzillo/Prosini Reply Decl., para. 38. Verizon also asserts that the real reason that Covad urges the Commission to require Verizon to adopt Maryland for proxy rates is because the Maryland **PSC** has decided to apply a zero rate to loop qualification and loop conditioning, which are of particular concern to DSL providers such as Covad. Verizon Virginia Reply at 66-67.

⁴⁴³ Covad Comments at 20-21

TELRIC cost study.⁴⁴⁴ Verizon counters, and we agree, that because the negotiated rates were only used when those rates were lower than the proxy rate, the lower interconnection rates would, by definition, fall within a reasonable TELRIC range because no commenter asserts that the New York-based **proxy** rates do not themselves fall within a reasonable TELRIC range.⁴⁴⁵ Thus, we reject Covad's first argument against the "alternative" method of using rates from interconnection agreements.

131. Covad also asserts that several of Verizon's rates reflected in its application, and in Verizon's March 22, 2002 letter to all Virginia competitive LECs, are greater than rates in Covad's current interconnection agreement with Verizon.⁴⁴⁶ Verizon responds that Covad made the same argument in the state proceeding and was rejected by the Virginia Hearing Examiner.⁴⁴⁷ Verizon also explained that it chose the lower interconnection agreement rate as the state-wide rate only if the element was being *purchased* by the competitive LEC at the time the proxy rates were set.⁴⁴⁸ If the competitive LEC was not purchasing the element at that time but had a lower price in its interconnection agreement than the proxy rate, Verizon reiterated that it would honor the lower rate for that **carrier**.⁴⁴⁹ Therefore, we reject Covad's challenge to Verizon's proxy rates.

f. Entrance Facility Rate

132. Starpower argues that Verizon should be prohibited **from** charging any entrance facilities rate element that "unjustifiably increases UNE rates in Virginia" before it receives section 271 **authority**.⁴⁵⁰ Noting that Verizon recently added a new entrance facilities rate for dedicated transport in New **York**, Starpower asserts that the rate **was** not the subject of any substantive review by the New York Commission and expresses concern that Verizon's Virginia

⁴⁴⁴ *Id.* at 21

⁴⁴⁵ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 33

⁴⁴⁶ Covad Comments at 20. Covad does note that Verizon told Covad that it would honor the rates in Covad's interconnection agreement, but **asserts** that this policy, nonetheless, violates Verizon's own pricing methodology for the proxy rates. *Id.*

⁴⁴⁷ Verizon Virginia Reply at 67; Verizon Woltz/Garzillo/Prosini Reply Decl., para. 51 (citing the Virginia Hearing Examiner Report at 90).

⁴⁴⁸ Verizon Woltz/Garzillo/Prosini Reply Decl., paras. 51-52

⁴⁴⁹ *Id.*, paras. 34, 52. Verizon explained that, "in the interest of fairness to itself, [it] did **not** commit itself to charging *all* CLECs a particularly low rate that a lone CLEC had negotiated for an element it was not actually purchasing **at** the time rates were established, particularly since any such low rate **often** could be the quid pro quo for a concession to Verizon **as part** of the negotiation process." *Id.*, para. 34. Moreover, Verizon noted that another competitive carrier could opt into the interconnection agreement with the lower rate so long as the agreement has not expired. *Id.* See also 41 U.S.C. § 252(i).

⁴⁵⁰ Starpower/US LEC Comments at 17

rate structure may “similarly include unwarranted entrance facilities charges.”⁴⁵¹ While noting that the Virginia Commission established a separate entrance facilities rate several years ago, Starpower states that “[i]t is not apparent that any substantive analysis of the propriety of an entrance facilities rate element was undertaken by the [Virginia Commission].”⁴⁵² Verizon responds that it is unclear what, if anything, Starpower is alleging is wrong, or why Starpower claims not to **know** if the Virginia rates include an entrance facility rate approved **by** the Virginia Commission.⁴⁵³ Verizon points out that Starpower itself acknowledges that the Virginia Commission approved the DSI and DS3 entrance facility rate elements in its prior proceeding.”⁴⁵⁴ Verizon also rejects Starpower’s assertion that the New York Commission did not review or approve the entrance facility rate in New York.⁴⁵⁵

133. As Verizon points out, Starpower acknowledges that the Virginia Commission approved an entrance facility rate in Virginia in the state pricing proceeding.⁴⁵⁶ If Starpower had an objection to the rate, it should have challenged it before the state commission at that time, but it does not appear to have done so. Nor has Starpower alleged in this proceeding any TELIUC error in the entrances facilities rate. Moreover, the record demonstrates that the Virginia Commission defined entrance facilities as a separate rate element, not merely to be consistent with Verizon’s cost studies, but to comply with the requirement that network elements be unbundled at “any technically feasible point.””” Starpower’s challenge to the entrance facility rate set by the New York Commission is beyond the scope of this proceeding. Therefore, in the absence of evidence that the Virginia Commission clearly erred in adopting the entrance facility rate, we reject Starpower’s challenge.

g. Deaveraging Issues

134. Both Cavalier and NTELOS contend that Verizon must reclassify wire centers, i.e., move a wire center from one density zone to another, in order to comply with checklist item two. NTELOS argues that Verizon should be required to reclassify automatically wire centers based on growth.⁴⁵⁸ According to NTELOS, the current classifications pose a hardship for rural

⁴⁵¹ Id. at 17-18.

⁴⁵¹ Id. at 18. Starpower states that the Virginia Commission determined a separate rate element for entrance facilities to be consistent with Verizon’s cost studies. Id.

⁴⁵³ Verizon Woltz/Garzillo/Prosini Reply Decl., para. 27.

⁴⁵⁴ Id. (citing Covad Comments at 17 and the Virginia *Interim* Pricing Order at 14).

⁴⁵⁵ Id., para. 28.

⁴⁵⁶ See Starpower/US LEC Comments at 18 (citing *Virginia* Interim Pricing Order at 14).

⁴⁵⁷ Virginia *Interim Pricing Order* at 13-14; 47 U.S.C. § 251(c)(3).

⁴⁵⁸ NTELOS Comments at 7.

competitive LECs and provide a strong disincentive to the development of rural competition,” Cavalier maintains that Verizon’s rates for loops served out of one particular central office, the Bethia wire center, are not in compliance with checklist item two because they foreclose competition.⁴⁶⁰ Cavalier states that, at the time permanent loop rates were established in Virginia and considering the age of the data underlying those rates, Bethia might have belonged in density cell three at the time rates were initially deaveraged.⁴⁶¹ It maintains, however, that the current classification of the Bethia wire center is no longer appropriate because of population growth in that wire center.⁴⁶² As discussed below, the Virginia Commission considered whether Verizon is obligated to reclassify a single wire center, and we find no clear error in the Commission’s decision.

135. Our regulations provide that “[s]tate commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.”⁴⁶³ The regulations also provide that, “[t]o establish geographically deaveraged rates, state commissions may use existing density-related zone pricing plans . . . **or other such cost-related zone plans established pursuant to state law.**”⁴⁶⁴ In the *Local Competition First Report and Order*, the Commission concluded that “the pricing standard for interconnection and unbundled elements prohibits deaveraging that is not cost based.”⁴⁶⁵ The requirement is important because, as we noted in the *CALLS SLC Cap Order*, cost-based deaveraging “promotes competition and efficiency by allowing a LEC to compete for subscribers when it is the lowest cost service provider and by removing support flows to the LEC’s higher-cost customers.”⁴⁶⁶ By contrast, non-cost-based deaveraging “may distort the operation of the markets in high-cost areas because LECs must offer services in those areas at prices substantially lower than their costs of providing service.”⁴⁶⁷

⁴⁵⁹ *Id.* NTELOS notes that the current classifications are based upon 1996 data. *Id.*

⁴⁶⁰ *See* Cavalier Comments at 14-17.

⁴⁶¹ Cavalier Comments at 15. Specifically, Cavalier states that the loop rates were established in a proceeding that was initiated in 1997 and apparently are based on data from as far back as 1994. *Id.*

⁴⁶² *Id.*

⁴⁶³ 47 C.F.R. § 51.507(f).

⁴⁶⁴ *Id.* § 51.507(f)(1) (emphasis added).

⁴⁶⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 15883, para. 766

⁴⁶⁶ *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, para. 18 (rel. June 5, 2002) (*CALLS SLC Cap Order*).

⁴⁶⁷ *Id.*

136. Consistent with our regulations, in its *Virginio Interim Pricing Order*, the Virginia Commission adopted a deaveraging methodology that **was** based on costs⁴⁶⁸ and did not specifically consider line density as a factor in determining wire center groupings.⁴⁷⁰ Specifically, the average UNE loop cost was deaveraged into three groups known as density cells one, two and three.⁴⁷⁰ On October 16, 2001, Cavalier applied to the Virginia Commission to reclassify the Bethia wire center from density cell three to density cell one.⁴⁷¹ The Virginia Commission denied Cavalier's application on the basis that Cavalier failed to allege a legal or factual basis upon which the Commission should investigate the UNE loop rates for the Bethia wire center.⁴⁷² On reconsideration, the Virginia Commission expanded its findings and agreed with Verizon that "it would be unfair to reclassify one wire center without, at a minimum, an entire reconfiguration of the density cell structure and a resulting recalculation of rates."⁴⁷³ The Virginia Commission concluded that it could not undertake such a reconfiguration without, in effect, changing its pricing decisions.⁴⁷⁴ Because the case in which the pricing decisions **were** issued had been closed, the Virginia Commission determined that it could not, as a procedural matter, consider

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Virginia Interim Pricing Order at 10; see *Application of Cavalier Telephone, LLC to Reclassify the Bethia Wire Center into Density Cell One*, Case No. PUC010213, Final Order at 3 (rel. Jan. 31, 2002) (*Virginia Bethia Order*), *aff'd*, *Application of Cavalier Telephone, LLC to Reclassify the Bethia Wire Center into Density Cell One*, Case No. PUCO10213, Order on Reconsideration (rel. Mar. 7, 2002) (*Virginia Bethia Recon. Order*).

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Virginia Bethia Order at 3

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Id. at 1 n.1, 3. Density cell three is the highest priced (\$29.40 for a basic loop) and density cell one is the lowest price (\$ 10.74 for a basic loop). *Id.* at 1 n.1. The Virginia Commission adopted Staffs recommended wire center groupings. *Virginia Interim Pricing Order* at 10. Staff found that approximately 75 percent of the lines in Verizon-Virginia's territory fell within a narrow range of wire center costs. Verizon Virginia Application at App. F, Vol. 2, Tab 10, Ex Pane: To Determine Prices Bell Atlantic-Virginia, Inc. is Authorized to Charge Competitive Local Exchange Carriers in Accordance with the Telecommunications Act of 1996 and Applicable State Law, Case No. PUC970005, Comparative Summary of Pricing Recommendations, at 17 (*Virginia Commission Staff Exhibits*). These wire centers are price group one, and the loop price reflects the line-weighted average of the costs of the wire centers in that group. The remaining, higher cost wire centers were divided into two price groups of approximately the same number of lines, denominated price groups two and three. *Virginio Commission Staff Exhibits* at 17.

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Virginia Bethia Order at 1; see Cavalier Comments at 16 and n.8. There is nothing in the record indicating that NTELOS has requested similar relief from the Virginia Commission.

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Virginio Bethia Order at 5. The Virginia Commission explained that, in its application, Cavalier relied on the incorrect premise that the Virginia Commission's deaveraging methodology was based on line density. *Id.* at 4.

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Virginia Bethia Recon. Order at 2. Cavalier disputes the notion that it is not possible to evaluate the cost structure for one wire center without doing a complete state-wide review. Cavalier Reply at 12. To support its position, Cavalier states that the state commission in Delaware ordered Verizon to re-evaluate its density cell classifications every three years, and requests that we advise the Virginia Commission to institute a similar periodic review. *Id.* NTELOS also questions Verizon's claim that it does not have the methodology to alter density zones without a full cost study for all loops in Virginia because, according to NTELOS, Verizon is able to reclassify individual exchanges into higher retail rate groups based on growth. NTELOS Comments at 7.

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Virginia Bethia Recon. Order at 3

issues raised in that proceeding.⁴⁷⁵ Further, the Virginia Commission declined to initiate a new generic rate case because it had established prices only a short time ago and because this Commission is currently addressing rates in the pending arbitration.⁴⁷⁶ The Virginia Commission reminded Cavalier, however, that it could pursue changes to the UNE loop rates in the Bethia wire center when it negotiates and/or requests arbitration of a new interconnection agreement with Verizon.⁴⁷⁷

137. We find nothing in the record here that gives us reason to disturb the Virginia Commission's exercise of its expertise and reasoned judgment in this matter. No commenter alleges that the deaveraging methodology adopted by the Virginia Commission is inconsistent with our regulations. Rather, Cavalier and NTELOS request that we find checklist noncompliance based on Verizon's refusal to reclassify particular wire centers.⁴⁷⁸ As explained above, the Virginia Commission concluded that reclassification of one wire center "would potentially impact the classification of other wire centers and the UNE loop rates in all three density cells."⁴⁷⁹ We agree that reclassification of a wire center from, for example, density cell three to density cell one would change the average costs of the wire centers in both groups and the resulting loops rates. For this reason, we find no error in the Virginia Commission's decision not to reclassify a single wire center. Moreover, we note that Cavalier has accepted the Virginia Commission's invitation to seek arbitration of this issue.⁴⁸⁰ Thus, we find that this issue does not warrant a finding of checklist noncompliance.

D. Checklist item 4 – Unbundled Local Loops

138. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching

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Id. at 3. The Virginia Commission noted that Cavalier did not request a new pricing proceeding in its application. *Id.* at n.6.

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Id. at 3.

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Virginia Berhia Order at 5; *Virginia Berhia Recon. Order* at 3-4

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Cavalier also argues that, unless the Bethia wire center is reclassified, it will be forced to cease offering service to new customers in the area and withdraw from offering service in the area. Cavalier Comments at 17. Cavalier explains that, at the time it entered the Bethia residential market in March 2001, it paid a reduced loop rate of \$14.40 per loop based on the Commission's decision approving the Bell-Atlantic GTE merger, and Verizon's approved loop rate in density zone 3 is \$29.40. *Id.* at 15. We decline to find checklist noncompliance based upon Cavalier's expectation that the Bethia wire center would be reclassified prior to the expiration of the reduced loop rate. Cavalier admits that it entered this market knowing that the loop rate was subject to a merger discount that would only be available for a limited period of time. *Id.* at 15. Thus, Cavalier entered the Bethia market with full knowledge that loop rate in that market could be \$29.40 and decided to enter the market nonetheless.

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Virginu Berhia Recon. Order at 2

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On August 14, 2002, Cavalier filed for arbitration on this subject. Cavalier Comments at 16 n.10